

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6871 OF 1998

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

PROF. HASMUKH HARJIVANDAS PATEL
VERSUS
STATE OF GUJARAT & ORS.

Appearance:

MR BP TANNA FOR PETITIONER
MR SP HASURKAR FOR RESPONDENTS NO.1 TO 3

Coram: MR.JUSTICE S.K. Keshote,J
Date of order:23/06/1999

C.A.V. JUDGMENT

#. This writ petition under Article 226 of the Constitution is filed by the petitioner, a retired Professor of H.K.Arts College, Ahmedabad. The petitioner retired from the services on attaining the age of superannuation in the year 1991. The College wherefrom he retired is undisputedly receiving grant-in-aid from the State of Gujarat. The Government framed pensionary scheme benefitting teaching and non teaching staff of non Government affiliated colleges and Universities vide Resolution dated 26th September 1989. It is not in dispute that as per the provisions as contained in the aforesaid scheme of pension, the petitioner has not opted for pensionary scheme. This pension scheme framed under the Resolution dated 26th September 1989 came to be amended vide Government Resolution dated 17th September 1991. The learned counsel for the respondents does not dispute that on 24th October 1991, the petitioner opted for pensionary scheme. It is also not in dispute that on 24.2.92, the petitioner deposited in the Government treasury, the institution's contribution towards his provident fund. This amount has been deposited by him to avail the pensionary benefits. The option submitted by the petitioner for pension scheme was accepted by the Commissioner for Higher Education and in support of this averment, he placed on the record of this Special Civil Application, document, annexure-D, a communication which came to him from the office of the Commissioner for Higher Education. It is the case of the petitioner that the Commissioner for Higher Education sent a letter to the Director of Pension and Provident Funds, Khanpur, Ahmedabad, dated 4.9.92, for preparing pension papers of the petitioner. The grievance of the petitioner is that in spite of giving him the pension benefits the Accounts Officer of the Director of Pension and Provident Fund raised an objection that the petitioner is not eligible for pension which reflects from the letter dated 17th November 1992 of this Officer addressed to the Commissioner for Higher Education. The objection raised is that the petitioner has retired on 17th June 1991 and on the date on which the relevant pension scheme was modified, he was not existing employee. The say of the petitioner is that the Commissioner for Higher Education also without applying its mind fall in error in relying on the objection raised by the Accounts Officer and communicated to the petitioner under its letter dated 30th September 1994 that he is not entitled for pensionary scheme. The petitioner submits that he has thereafter approached to all the authorities but when nothing has been done he has filed this writ petition before this Court. In paragraphs 6 and 7 of this Special Civil Application he has given out details of the efforts

which have been made by him to pursue the authorities to release the pension in his favour.

#. This writ petition has been contested by respondents by filing reply and further affidavit-in-reply.

#. The learned counsel for the petitioner contended that the respondents have totally misconstrued the Resolution dated 26th September 1989 and the Resolution dated 17th September 1991. He further contended that a combined reading of these two Resolutions clearly gives out that the petitioner was entitled for pension and denial of the same is contrary to Article 14 and 21 of the Constitution of India. It has next been contended that in case what the respondents are now stating before this Court is accepted, then the second Resolution giving one more change of option for the pension scheme will become redundant, inoperative and useless. Lastly, it is contended that the sanctioning authority has accepted the claim of the petitioner but the Accounts Officer has arbitrarily raised the objection. The learned counsel for the petitioner submits that the petitioner deposited with the respondents Rs.68,814/= being the amount of employer's contribution to the provident fund and this amount has been accepted long back which goes to show that the authorities have accepted his claim, eligibility and entitlement for pension. In case it is a case that the case of the petitioner is not acceptable for pension, then this amount of Rs.68,814/= should have been forthwith sent to the petitioner. The respondents are retaining this huge amount of the petitioner for more than seven years till date.

#. On the other hand the learned counsel for the respondents contended that the benefit of second Resolution dated 17th September 1991 is also available only to the existing employees. The petitioner retired from services on 14th June 1991 and he had not given option for pension in response to the earlier Resolution and as such, he has rightly been held to be ineligible for pension.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. It is not in dispute that the Commissioner for Higher Education was agreeable with the case of the petitioner and he was of the opinion that the petitioner is entitled for pension. The Accounts Officer raised objection and the Commissioner for Higher Education being the competent authority, instead of examining the matter on merits, has

decided the same without application of mind and has blindly followed the opinion of the Accounts Officer. It is not the case where whatever the Accounts Officer says and whatever objection raised by the Accounts Officer are always correct. It is unfortunate in this country that bureaucrats are taking the opinion of the Accounts Officer as if these are perfectly legal and justified or correct opinion. In such matters, it is always advisable and the reason is very obvious that it pertains to conferment of benefit of pension to retired employees, that a high powered committee is constituted in which the Chief Secretary, Secretary to the Department concerned, here in this case, the Commissioner for Higher Education, Finance Secretary and Director of Pension sit together and take a final and correct decision in the matter. The question of on whom the financial burden would fall in case the petitioner's entitlement for pension is accepted, is hardly of any substance and relevance. Pension is not a charity or booty which is distributed to the employees. Employees earn the right of pension after putting long services and these matters are to be taken in the correct perspective and the Resolutions under which the pension scheme has been framed as well as the rules pertaining to the grant of pension etc. are to be liberally construed so that the retired employees may get maximum benefits. Pension is a scheme for benefit of old persons so that they may not have any financial crises and difficulties to meet out day to day expenses. There is a logical and reasonable distinction between two schemes, i.e. employees contributory provident fund scheme and pension scheme, what in common parlance is known as G.P.F. scheme. It is not out of context to state or is gainsaid that in case an employee is paid lumpsum amount the possibility of divesting of the same by him cannot be overruled. Otherwise also the substratum of the lumpsum payment of the amount paid to him as retirementary benefit being the principle of this scheme - the employees provident fund contributory scheme will go in many cases. Contrary to it in the pension scheme, an employee will get monthly amount so long as he survives. Prima-facie the pension scheme appears to be more beneficial and in the larger interest of old retired employees. That is the reason that almost all the Corporations etc. now diverge from the employees provident fund scheme to the pension scheme (GPF). I fail to see any justification in the act of the respondents when the petitioner was not really entitled for pension, to retain the huge amount of Rs.68,000/= and odd for all these years. The petitioner is a retired person and this amount of Rs.68,000/= and odd is a handsome amount for him and by retaining the same he

would have earned interest thereon which amount would have been helped him to meet out his day to day expenses. The respondents have acted highly arbitrarily and against the basic principles of fair play as well as not in the larger interest of retired employee by retaining this handsome amount of petitioner. The moment the respondents decided that the petitioner is not entitled for pension, this amount should have been refunded to him with interest. In fact, the petitioner, to show his bonafides, has immediately deposited the amount with the respondents. However, the question of entitlement of petitioner for pension, I am not finally deciding in this writ petition at this stage.

#. In the result, this writ petition is allowed in the terms that the Chief Secretary of the State of Gujarat is directed to constitute a high powered committee headed by himself and other members of the committee being the following:

- (i) Secretary to the Department of Education
- (ii) Secretary to the Finance Department
- (iii) Commissioner for Higher Education
- (iv) Director of Pension and Provident Funds

#. The matter of eligibility or entitlement of the petitioner for pension with reference to the pension scheme as contained under the Resolution dated 26th September 1989 and as modified under the Resolution dated 17th September 1991 shall be considered by this Committee and to take a final decision within a period of one month from the date of receipt of writ of this order. Where the petitioner is found eligible and entitled for pension, then accordingly, he should be given all consequential benefits and on the arrears of amount of pension and other retirementary benefits, he shall be entitled for interest at the rate of 12% p.a. from 25.2.92, the date on which he deposited Rs.68,814/= with the respondents. Where the claim of the petitioner for pension and other retirementary benefits is not acceptable, the said Committee shall give a reasoned order and a copy of the same may be sent to the petitioner by registered post A.D. In case where the petitioner desires for personal hearing in the matter by the Committee, on receiving of this intimation by him, he may be given the opportunity. This opportunity is only available to the petitioner in case he immediately sends his desire to the Chief Secretary of the State of Gujarat under the registered A.D. letter captioned this Special Civil Application. In case where the decision taken by the Committee is adverse to the petitioner, the

respondent No.1 is directed to refund the amount of Rs.68,814/= within a period of one week from the date of that decision along with interest at the rate of 12% p.a. from the date of deposit till the date of payment to the petitioner. Rule is made absolute in aforesaid terms with liberty to the petitioner for revival of this special civil application in case of difficulty. At this stage, no order as to costs.

(S.K.Keshote, J.)

[sunil]